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FEB 21 2019 CA
 AT SEATTLE
 CLERK U.S. DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON DEPUTY
 BY

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON

CASE #

MC19-019RSC

In Re:

Application of EDWARD D. FAGAN
 pursuant to 28 U.S.C. § 1782 for Judicial Assistance in
 obtaining evidence from BANK OF AMERICA
 J. P. MORGAN CHASE a/k/a CHASE and
 CREDIT REGISTRY CORP.
 for use in a Foreign Tribunal and Proceeding

**APPLICATION FOR JUDICIAL ASSISTANCE
PURSUANT TO 28 U.S.C. § 1782 TO AID IN FOREIGN PROCEEDING**

EDWARD D. FAGAN (hereinafter "Applicant"), acting as a pro se Applicant,
 hereby makes the following application for limited judicial assistance pursuant to 28 U.S.C. §
 1782 to aid in Foreign Proceeding(s) which is now pending before and being investigated by the
 South African Police Services – Serious Commercial Crimes Unit - SAPS # 3471/1/2019 - and
 hereby requests an order directing production of documentary evidence that is in the custody,
 possession and/or control of Witnesses BANK OF AMERICA, J. P. MORGAN a/k/a CHASE
 and CREDIT REGISTRY CORP. which are found in and which do business in this District, and
 respectfully shows the Court the following:

I. **INTRODUCTION**

1. This Application for Judicial Assistance is to obtain evidence as allowed pursuant to
 Section 1782(a), and the US Supreme Court in *Intel v. Advanced Micro Devices, Inc.*,

Fee paid / SEA #94802

1 542 U.S. 241 (2004) so that the evidence obtained from persons and entities residing
 2 and/or found within this judicial district so that evidence “ . . . for use in a proceeding
 3 in a foreign or international tribunal, including criminal investigations conducted
 4 before formal accusation.”

5 2. As explained below, Applicant, his partners and predecessors (hereinafter collectively
 6 referred to as “Applicant”) are victims of internet fraud and crimes, which are a new
 7 twist on the long standing “Nigerian Scams”, involving inheritance monies.¹

8 3. Monies involved in the fraud and crimes against Applicant were funneled through
 9 accounts that were opened and maintained with the Witnesses BANK OF AMERICA
 10 (hereinafter “BOA”), J.P. MORGAN a/k/a CHASE (hereinafter “CHASE”) AND
 11 CREDIT REGISTRY CORP. (hereinafter “CREDIT REGISTRY”) are located in and
 12 found in this District.

13 4. The evidence sought (i) is limited to the two accounts and the two different transfers
 14 that occurred through BoA and CHASE accounts, listing CREDIT REGISTRY as the
 15 beneficiary, in May and June 2017 (as identified in Par. 21) and (ii) is to be used in
 16 the Foreign Proceeding pending before and being investigated by the South African
 17 Police Services – Serious Commercial Crimes Unit - SAPS # 3471/1/2019. A copy
 18 of SAPS # 3471/1/2019 and police docket sheet is attached as Exhibit 1.

19 5. The South African Police Services investigation has been assigned to Captain Eric
 20 Chiloane of the South African Police Services – Serious Commercial Crime Unit, at
 21 419 Unit 22 Buthongo Building, Car Visagie and Andries Streets Pretoria, Email
 22 address below ChiloaneEric@saps.gov.za

¹ Applicant acquired and is the assignee and owner of 100 % of the rights and interests of
 his partners and predecessors, including but not limited as relates to this Application Russ
 Daneluk and Rick Quigley. Attached collectively as Exhibit 2.

1 6. The Applicant has been requested to and will return to South Africa to provide
2 additional information so that the South African Police Services – Serious
3 Commercial Crime Unit – which will in turn share the information with and that they
4 will share that information with the South African Department of Justice and South
5 Africa’s Branch of Interpol, who will also be investigating and who will prosecute all
6 the persons involved with the crimes against Applicant and who actually received the
7 monies that were transferred through the Witnesses BoA, CHASE and CREDIT
8 REGISTRY.

9 II. **FACTS RELATED TO THE APPLICATION**

10 1. Applicant is a victim to a scheme that involved electronic communications sent to an
11 American Woman from Idaho (hereinafter “The Idaho Woman”) who was allegedly
12 an heir to inheritance monies and assets that were held in Nigeria, but which could be
13 transferred to the United States.

14 2. The inheritance monies and assets to which The Idaho Woman claimed entitlement
15 allegedly came from her deceased father (hereinafter “Inheritance Monies”) and were
16 allegedly lawfully earned during the course of her father’s contracting business(es) in
17 Africa.

18 3. The Idaho Woman came to know a Canadian national who she allegedly met from her
19 mother.

20 4. The Idaho Woman and The Canadian National supposedly became engaged.

21 5. The Canadian National was a relative of one of Applicant’s predecessors.

22 6. The Idaho Woman and The Canadian Man (and later Applicant) were told that in
23 order to get The Inheritance Monies to be transferred certain monies for fees,
24 services, customs, duties and other charges had to be paid.

- 1 7. Prior to approaching Applicant, The Idaho Woman and The Canadian National
2 allegedly exhausted all their resources and were unable to complete the transfer.
- 3 8. They then approached Applicant, to induce them to provide additional assistance,
4 documents and monies.
- 5 2. Applicant was offered rights and interests to The Inheritance Monies assuming
6 Applicant would provide the additional monies, resources and assistance to get The
7 Inheritance Monies transferred into account(s) where they could then be legally
8 distributed to the interested persons.
- 9 3. Applicant provided with documents in which The Idaho Woman purportedly
10 transferred her interests in The Inheritance Monies to The Canadian National.
- 11 4. On their face, the documents appeared to be legitimate and there appeared to be no
12 reason to doubt that The Inheritance Monies existed and could be legally transferred.
- 13 5. At all times, Applicant believed that The Inheritance Monies actually existed, the
14 rights to The Inheritance Monies were legitimate and he could lawfully acquire an
15 interest in the monies and assets.
- 16 6. At all times, Applicant was committed to the fact that before anyone was entitled to
17 receive and take any of The Inheritance Monies that all taxes, customs duties,
18 transfer fees and other government and regulatory compliance requirements were
19 met and that when the money was actually transferred, it would be clean and not the
20 subject of any illegal or unlawful activity.
- 21 7. Applicant considered this to be a lawful business investment to which they would
22 contribute time, energy and monies in exchange for the return of The Inheritance
23 Monies.
- 24 8. From 2016 to present, Applicant was solicited to assist in getting The Inheritance

1 Monies lawfully transferred because The Idaho Woman and The Canadian National
2 had exhausted all their resources, were unable to complete the transfer and needed
3 additional assistance and monies.

4 9. The American woman and The Canadian National gave Applicant documents and
5 information that was used by the scheme's coordinators and which to documents and
6 information were intended to convince Applicant about the existence of the alleged
7 inheritance monies and the bona fides of what the scheme's coordinators said was
8 needed to be done in order to get the release of The Inheritance Monies.

9 10. Applicant was told (verbally and in writing) that what was needed to ensure the
10 transfer of The Inheritance Monies was the payment of various fees, invoices, costs
11 or other monies to persons and entities who had accounts at various banks in the
12 United States.

13 11. Applicant was presented with various documents all of which were transmitted by
14 email or text messages and in which the domain names, email addresses and
15 documents themselves appeared on their face to be authentic.

16 12. In reality, the documents and information presented to Applicant were fakes and
17 were part and parcel of an elaborate scheme designed and intended to trick Applicant
18 to transfer monies to accounts throughout the United States and as relates to this
19 Application, to accounts that were maintained by the Witnesses BoA, CHASE and
20 CREDIT REGISTRY in this District.

21 13. Some of the persons who are the subject of the investigation pending before and
22 being investigated by the South African Police Services – Serious Commercial
23 Crimes Unit - SAPS # 3471/1/2019 have already been identified.

24 14. The identity of other persons and entities as well as the persons / entities behind the

1 scheme can only be discovered through the information subpoenaed from Witnesses
2 BoA, CHASE and CREDIT REGISTRY – and those persons relationships to the
3 persons in South Africa are important to the investigation of South African Police
4 Services – Serious Commercial Crimes Unit - SAPS # 3471/1/2019.

5 15. The persons involved created (i) fake domain names disguising themselves as banks,
6 financial institutions and government agencies; (ii) fake government agency
7 letterheads and documents; and (iii) fake bank and financial institution letterheads
8 and documents.

9 16. By way of example, attached are examples of the fake emails originating from fake
10 domain addresses and transmitting forged documents:

11 a. Exhibit 3 - Email from Domain Name – “draftissue.com” – masquerading as
12 a “Chase Bank” domain and email name / address. In reality, the domain
13 name “draftissue.com” and the email addresses associated with it are / were
14 not Chase Bank emails, the documents being transmitted were not authentic
15 Chase documents and the domain was owned and operated out of South
16 Africa by the woman who is the subject of the pending criminal investigation
17 in South Africa.

18 b. Exhibit 4 – proof that the domain name “draftissue.com” is NOT a Chase
19 Bank domain name but is owned and operated by the South African woman
20 who is the subject of the pending criminal investigation in South Africa and
21 who is one of the wrongdoers in the internet crimes committed against
22 Applicant.

23 c. Exhibit 5 - Email from Domain Name – “fddic.com” – masquerading as the
24 United States Government’s Federal Deposit Insurance Corporation (“FDIC”)

1 domain and email name / address. In reality, the domain name "fddic.com"
2 and the email addresses associated with it are / were not official US
3 Government FDIC emails, the documents being transmitted were not
4 authentic US Government FDIC documents and the domain was owned and
5 operated out of South Africa by the woman who is the subject of the pending
6 criminal investigation in South Africa.

7 d. Exhibit 6 – proof that the domain name "draftissue.com" is NOT a Chase
8 Bank domain name but is owned and operated by the South African woman
9 who is the subject of the pending criminal investigation in South Africa and
10 who is one of the wrongdoers in the internet crimes committed against
11 Applicant.

12 17. Using the fake, forged and false documents, tricked Applicant into believing that The
13 Inheritance Monies are / were legitimate and could be transferred.

14 18. These fake, forged and false documents purportedly authenticated The Inheritance
15 Monies and "confirmed" that The Inheritance Monies were held by banks or
16 financial institutions oversees which will transfer the inheritance assets to banks or
17 financial institutions in the United States.

18 19. The above fake forged and false documents were used to get Applicant to transfer the
19 monies to the BoA, CHASE and CREDIT REGISTRY accounts as set forth in par.
20 21 below.

21 20. From 2016 to present, Applicant transferred millions of dollars in an effort to secure
22 The Inheritance Monies, which combined were alleged to have been in excess of
23 forty-seven million dollars (47,000,000.00 USD).

24 21. As relates to the Witnesses the following transfers were made to accounts on which

1 CREDIT REGISTRY was listed as the beneficiary:

2 a. May 29, 2017 - BoA Account #~~XXXXXX~~5522 - \$ 30,000.00

3 b. June 13, 2017 – CHASE - Account #~~XXXX~~5078 - \$ 50,000.00

4 22. Each time Applicant was told to send the money to the BoA and CHASE accounts,
5 listing CREDIT REGISTRY as the beneficiary, the monies were supposed to secure
6 the release of The Inheritance Monies in which Applicant acquired an interest and
7 were helping to secure the patriation of the assets and the payment of all taxes,
8 customs and duties related to the transfer of inheritance assets.

9 23. Applicant was told by the South African Police Services – Serious Commercial
10 Crimes Unit – that they intend to “follow the money” that was, in part, transferred to
11 / through the above BoA and CHASE accounts, listing CREDIT REGISTRY as the
12 beneficiary.

13 24. Applicant has no recourse or ability on his own – without the relief granted in this
14 Application - to be able to present the South African Police Services – Serious
15 Commercial Crimes Unit – with the account information to assist them in “following
16 the money” to identify the person(s) or entities, who/which are behind this massive
17 internet fraud and to whom the monies were transferred after the monies left the
18 above referenced BoA and CHASE accounts, listing CREDIT REGISTRY as the
19 beneficiary.

20 25. Applicants therefore seeks to serve subpoenas upon the witnesses BoA and CHASE
21 for the limited information related to the two accounts and the two different transfers
22 that occurred, through the above BoA and CHASE accounts, listing CREDIT
23 REGISTRY as the beneficiary, in May and June 2017 (as identified in Par. 21).

24 26. This application seeks ONLY information related to above referenced two accounts

1 and two different transfers that occurred, through the above BoA and CHASE
2 accounts, listing CREDIT REGISTRY as the beneficiary, in May and June 2017 (as
3 identified in Par. 21).

4 27. The Witnesses BoA, CHASE and CREDIT REGISTRY should have the information
5 related to above referenced two accounts and two different transfers that occurred,
6 through the above BoA and CHASE accounts, listing CREDIT REGISTRY as the
7 beneficiary, in May and June 2017 (as identified in Par. 21) and specifically where
8 the monies were transferred and/or by whom the monies were withdrawn.

9 28. This is all information that the South African Police Services – Serious Commercial
10 Crimes Unit – suggested that Applicant try to get for them.

11 29. Applicant is not seeking to circumvent evidence gathering laws or procedures in
12 South Africa.

13 30. Applicant is engaged in a fishing expedition.

14 31. Applicant believes that this application is the best and fastest way to obtain evidence
15 needed to assist the South African Police Services – Serious Commercial Crimes
16 Unit – in their investigation and ultimate prosecution of the persons who were behind
17 the internet fraud and scheme and who will be shown to have directly received and
18 benefitted from the monies that were transferred through the above referenced two
19 accounts and two different transfers that occurred, through the above BoA and
20 CHASE accounts, listing CREDIT REGISTRY as the beneficiary, in May and June
21 2017 (as identified in Par. 21)

22 32. Applicant believes that granting the relief requested presents no hardship or burden
23 to related to information related to above referenced two accounts and two different
24 transfers that occurred, through the above BoA and CHASE accounts, listing

1 CREDIT REGISTRY as the beneficiary, in May and June 2017 (as identified in Par.
 2 21), all of which can be easily provided by the witnesses because the evidence is in
 3 their possession in this district and any electronically stored evidence can easily be
 4 produced from their servers, computer stored files and databases in this district.

5 33. Applicant believes that granting the relief requested on an ex-parte basis is
 6 appropriate as it does not affect the witnesses BoA and CHASE or CREDIT
 7 REGISTRY as this request is only to grant the issuance of subpoenas to which a
 8 Motion to Quash or Objections may be filed. See Macquarie Bank I, 2014 WL
 9 7706908, at *1 (citing *In re Letters Rogatory from Tokyo Dist.*, Tokyo, Japan, 539
 10 F.2d 1216, 1219 (9th Cir. 1976)); IPCom GMBH & Co. KG v. Apple Inc., 61 F.
 11 Supp. 3d 919, 922 (N.D. Cal. 2014) (“It is common for parties to file ex parte
 12 applications, as parties will be given adequate notice of any discovery taken pursuant
 13 to the request and will then have the opportunity to move to quash the discovery or to
 14 participate in it.” (footnote and quotation omitted)).

15 34. Applicant believes that granting this application is consistent with the principles of
 16 28 U.S.C. § 1782 and Fed R. Civ. P Rule 26.²

17 II. **WITNESSES ARE FOUND IN THIS DISTRICT**

18 1. The Witness BANK OF AMERICA maintains a branch, with officers, personnel and
 19 a phone number at 20830 108th Avenue SE, Kent, Washington in this District. See

² 28 U.S.C. § 1782 provides that testimony shall be taken, and documents / things produced in accordance with the Federal Rules of Civil Procedure). Fed. R. Civ. P. 26(d) provides that a district court may authorize early discovery for the parties' and witnesses' convenience and in the interests of justice. See, e.g., *IO Group, Inc. v. Does 1-65*, 2010 WL 4055667, at *2 (N.D. Cal. 2010); *Solarbridge Tech. v. John Doe*, 2010 WL 3419189 (N.D. Cal. 2010) (applicant should be given opportunity through discovery to identify unknown persons/entities) (*citing Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980); *Semitool, Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273, 275-77 (N.D. Cal. 2002) and *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573, 578-80 (N.D. Cal. 1999)) (factors to be considered when establishing good cause to learn the identity of an unknown entity through early discovery).

1 https://locators.bankofamerica.com/wa/kent/financial-centers-kent-

2 8135.html?utm_source=GMBlisting&utm_medium=organic

3 2. The Witness J.P. MORGAN CHASE a/k/a CHASE maintains a branch with officers,
4 personnel and a phone number at 23630 104th Avenue, Kent, Washington, in this
5 District. See

6 https://locator.chase.com/search/wa/kent?q=98031&jp_cmp=rb%2FLocalListings%2
7 Faff%2Fbranch%2Fna

8 3. The Witness CREDIT REGISTRY CORP. maintains offices and personnel in this
9 District (<http://www.creditregistry.com/main/contactus.asp>) and their address and
10 contact information as listed are 6226 S 233 Street, Kent WA 98032, Phones Office:
11 +1 (425) 269-5005 & Fax: +1 (832) 550-4200 and Nigeria Address - NECOM
12 House, 14th Floor 15 Marina, Lagos Phones Office: +234 (1) 454-8700, +234 (1)
13 454-8701 and +234 (702) 537-3404.

14 **III. WITNESSES ARE NOT PARTIES OR TARGETS OF FOREIGN**
15 **INVESTIGATIONS**

16 The Witnesses BANK OF AMERICA, CHASE and CREDIT REGISTRY CORP. are not
17 parties, nor are they in privy, with any other party in the investigations and proceedings
18 by the South African Police Services – Serious Commercial Crimes Unit.

19 **IV. THE APPLICATION IS CONSISTENT WITH SUPREME COURT PRINCIPLES**

20 1. The application is consistent with the principles and standards set forth in *Intel Corp.*
21 v. *Advanced Micro Devices, Inc.*, 542 U.S. 241, 264 (2004); *Consorcio Ecuatoriano*
22 de *Telecommunicaciones S.A. v. JAS Forwarding (USA), Inc.*, No. 11-12879, 2012
23 WL 2369166 (11th Cir. June 25, 2012); see *In re Clerici*, 481 F.3d 1324, 1331 (11th
24 Cir. 2007); *United Kingdom v. United States*, 238 F.3d 1312, 1319 (11th Cir. 2001);
25 *Kulzer v. Esschem. Inc.*, 390 Fed. Appx. 88, 91 (3d Cir. 2010).

1 2. Further, as reflected by the language of § 1782, its purpose is to provide federal court
2 assistance in gathering evidence for use in a foreign tribunal. *See Intel Corp. v.*
3 *Advanced Micro Devices, Inc.*, 542 U.S. 241, 247 (2004); and *Schmitz v. Bernstein*
4 *Liebhard & Lifshitz, LLP*, 376 F.3d 79, 84 (2d Cir. 2004) (§ 1782 has “twin aims,”
5 i.e., “providing efficient means of assistance to participants in international litigation
6 in our federal courts and encouraging foreign countries by example to provide similar
7 means of assistance to our courts”) (internal quotation marks omitted).

8 **V. EVIDENCE SOUGHT IS SPECIFIC/RELEVANT TO FOREIGN**
9 **INVESTIGATIONS**

10 1. The evidence sought in this Petition is limited. It requests only specific
11 information related to the above referenced two accounts and two different
12 transfers that occurred, through BoA and CHASE accounts, listing CREDIT
13 REGISTRY as the beneficiary, in May and June 2017 (as identified in Par. 21)
14 2. The evidence sought will be provided to the South African Police Services –
15 Serious Commercial Crimes Unit – so that they can identify and prosecute the
16 person(s) or entities, who/which are behind this massive internet fraud and to
17 whom the monies were transferred AFTER they left the above referenced two
18 accounts and two different transfers that occurred, through BoA and CHASE
19 accounts, listing CREDIT REGISTRY as the beneficiary, in May and June 2017
20 (as identified in Par. 21)

21 **VI. EX-PARTE APPLICATION PRESERVES WITNESS’ RIGHTS TO RAISE**
22 **OBJECTIONS TO SUBPOENA VIA MOTION TO QUASH**

23 1. In general, ex parte requests are disfavored and mostly limited to emergency
24 situations because such requests disrupt and undermine the adversarial system on
25 which the Court generally operates. *In re Judicial Assistance Pursuant to U.S.C. Sec.*

1 1782 ex rel. Macquarie Bank Ltd. (Macquarie Bank I), 2014 WL 7706908, at *1 (D.
 2 Nev. June 4, 2014); In re Intermagnetics Am., Inc., 101 B.R. 191, 192-93 (C.D. Cal.
 3 1989).

4 2. The Ninth Circuit has held that applications for subpoenas pursuant to § 1782 may be
 5 filed *ex parte* because “[t]he witnesses can . . . raise[] objections and exercise[] their
 6 due process rights by motions to quash the subpoenas.” *In re Letters Rogatory from*
 7 *Tokyo Dist., Tokyo, Japan*, 539 F.2d 1216, 1219 (9th Cir. 1976).

8 3. § 1782 petitions are regularly reviewed on an ex parte basis. See Macquarie Bank I,
 9 2014 WL 7706908, at *1; In re Republic of Ecuador, 2010 WL 3702427, *2 (N.D.
 10 Cal. Sept. 15, 2010).

11 4. Consequently, orders granting § 1782 applications typically only provide that
 12 discovery is “authorized,” and thus the opposing party may still raise objections and
 13 exercise its due process rights by challenging the discovery after it is issued via a
 14 motion to quash, which mitigates concerns regarding any unfairness of granting the
 15 application ex parte. See Macquarie Bank I, 2014 WL 7706908, at *1 (citing *In re*
 16 *Letters Rogatory from Tokyo Dist., Tokyo, Japan*, 539 F.2d 1216, 1219 (9th Cir.
 17 1976)); IPCom GMBH & Co. KG v. Apple Inc., 61 F. Supp. 3d 919, 922 (N.D. Cal.
 18 2014) (“It is common for parties to file *ex parte* applications, as parties will be given
 19 adequate notice of any discovery taken pursuant to the request and will then have the
 20 opportunity to move to quash the discovery or to participate in it.” (footnote and
 21 quotation omitted)).

22 5. Petitioner only seeks the issuance of the subpoena which is necessary to compel the
 23 Witnesses BoA, CHASE and CREDIT REGISTRY to produce account related
 24 information, related to above referenced two accounts and two different transfers that

1 occurred, through the above BoA and CHASE accounts, listing CREDIT
2 REGISTRY as the beneficiary, in May and June 2017 (as identified in Par. 21).

3 6. In the event Witness BoA or CHASE or CREDIT REGISTRY object to the
4 requested production, their rights are preserved, and they can file a Motion to Quash
5 after the subpoenas have been authorized and served on the Witness Bank.

6 **VII. PETITION IS MADE IN COMPLIANCE WITH 28 U.S.C. § 1782**
7 **REQUIREMENTS, CIRCUIT PRECEDENT & SHOULD BE GRANTED**

8 **A. The Requirements of Section 1782 and Subpoenas Have Been Met**

9 1. 28 U.S.C. § 1782(a), which provides:

10 *The district court of the district in which a person resides or is found may order
11 him to give his testimony or statement or to produce a document or other thing for
12 use in a proceeding in a foreign or international tribunal, including criminal
13 investigations conducted before formal accusation. The order may be made
14 pursuant to a letter rogatory issued, or request made, by a foreign or
15 international tribunal or upon the application of any interested person and may
16 direct that testimony or statement be given, or the document or other thing be
17 produced, before a person appointed by the court. By virtue of his appointment,
18 the person appointed has power to administer any necessary oath and take the
19 testimony or statement. The order may prescribe the practice and procedure,
20 which may be in whole or part the practice and procedure of the foreign country
21 or the international tribunal, for taking the testimony or statement or producing
22 the document or other thing. To the extent that the order does not prescribe
23 otherwise, the testimony or statement shall be taken, and the document or other
24 thing produced, in accordance with the Federal Rules of Civil Procedure.*

25
26
27 *Emphasis added*

1 2. Since 1948, “Congress [has] substantially broadened the scope of assistance federal
2 courts could provide for foreign proceedings,” pursuant to § 1782. *Intel*, 542 U.S. at
3 247-48.

4 3. The use of *ex parte* applications is widespread and, in many cases, unremarked upon
5 (and thus approved of *sub silentio*). See, e.g., *In re Request from UK Pursuant to*
6 *Treaty Between Gov’t of U.S. & Gov’t of UK on Mut. Assistance in Criminal Matters*
7 *in the Matter of Dolours Price*, 685 F.3d 1, 6 (1st Cir. 2012), cert. denied, 133 S. Ct.
8 1796 (2013); *Brandi-Dohrn v. IKB Deutsche Industriebank AG*, 673 F.3d 76, 78 (2d
9 Cir. 2012); *In re Consorcio Ecuatoriano de Telecommunicaciones S.A. v. JAS*
10 *Forwarding (USA), Inc.*, 685 F.3d 987, 992 (11th Cir. 2012); *In re Clerici*, 481 F.3d
11 1324, 1329 (11th Cir. 2007).

12 4. “The history of § 1782 reveals Congress’ wish to strengthen the power of district
13 courts to respond to requests for international assistance.” *Lo Ka Chun v. Lo To*, 858
14 F.2d 1564, 1565 (11th Cir. 1988).

15 5. Congress has granted the district courts broad discretion in granting judicial
16 assistance under § 1782. *In re Application of Consorcio Ecuatoriano de*
17 *Telecommunicaciones S.A.*, 2012 WL 2369166, at *21 (11th Cir. 2012); *In re Clerici*,
18 481 F.3d 1324, 1331 (11th Cir. 2007); *United Kingdom v. United States*, 238 F.3d
19 1312, 1319 (11th Cir. 2001).

20 6. The district court has authority to grant § 1782 application for judicial assistance if
21 the following statutory requirements are met: (1) request must be made “by a foreign
22 or international tribunal,” or by “any interested person”; (2) request must seek
23 evidence, whether it be the “testimony or statement” of a person or the production of
24 “a document or other thing”; (3) evidence must be “for use in a proceeding in a

1 foreign or international tribunal”; and (4) person/entity from whom/which discovery
 2 is sought must reside and be found in the district of the district court ruling on the
 3 application for assistance. 28 U.S.C. § 1782(a); *In re Clerici*, 481 F.3d at 1332, and
 4 *In re Chevron Corp.*, 2010 U.S. Dist. LEXIS 47034, at *15.

5 7. Once the statutory requirements have been satisfied, the district court should consider
 6 the following factors in deciding whether to exercise the discretion granted under §
 7 1782: (1) whether “the person from whom discovery sought is a participant in the
 8 foreign proceeding,” because “the need for § 1782(a) aid generally is not as apparent
 9 as it ordinarily is when evidence is sought from a nonparticipant”; (2) “the nature of
 10 the foreign tribunal, the character of the proceedings underway abroad, and the
 11 receptivity of the foreign government or the court or agency abroad to U.S. federal
 12 court judicial assistance”; (3) “whether the § 1782(a) request conceals an attempt to
 13 circumvent foreign proof-gathering restrictions or other policies of a foreign country
 14 or the United States”; and (4) whether the request is otherwise “unduly intrusive or
 15 burdensome.” *In re Clerici*, 481 F.3d at 1334 (quoting *Intel*, 542 U.S. at 264-65).

16 8. The Supreme Court has held that § 1782 does not contain a “foreign-discoverability
 17 requirement” – i.e., there is no requirement that the information sought be
 18 discoverable under the law governing the foreign proceeding. *Intel*, 542 U.S. at 253.
 19 The Court has further held that there is no requirement that a § 1782 applicant show
 20 “United States law would allow discovery in domestic litigation analogous to the
 21 foreign proceeding.” *Id.* at 263.

22 9. Section 1782(a) further “directs judges to provide discovery assistance pursuant to the
 23 Federal Rules of Civil Procedure,” *Weber v. Finker*, 554 F.3d 1379, 1383 (11th Cir.
 24 2009), so long as the order does not prescribe the practice and procedure of the

1 foreign country or the international tribunal.

2 **B. Applicant Has Met the § 1782(a) Statutory Requirements**

3 1. The complaints pending and ongoing investigations by the South African Police
 4 Services – Serious Commercial Crimes (SAPA # 3471/1/2019) is a foreign
 5 proceeding. *See 28 U.S.C. § 1782(a) and In re Letters of Request to Examine
 6 Witnesses, 59 F.R.D. 625, 629 (N.D. Cal. 1973)* (“crucial requirement is that the
 7 foreign body exercise adjudicative power and have an adjudicative purpose”).

8 2. Applicant is the complainant and a party to the foreign proceeding. *See 28 U.S.C. §
 9 1782(a) and Intel, 542 U.S. at 256* (stating that an interested person under § 1782
 10 “plainly reaches beyond the universe of persons designated ‘litigant,’” although there
 11 is “[n]o doubt [that] litigants are included among and may be the most common
 12 example”).

13 3. Applicant seeks only limited evidence in the form of witness testimony and
 14 production of documents relevant to the related to above referenced two accounts
 15 and two different transfers that occurred, through the BoA and CHASE accounts,
 16 listing CREDIT REGISTRY as the beneficiary, in May and June 2017 (as identified
 17 in Par. 21) to help the South African Police Services – Serious Commercial Crimes
 18 (SAPA # 3471/1/2019) “follow the money”, identify and prosecute all the person(s)
 19 and/or entities in addition to the person(s) already being investigated and who
 20 created the fake and false domain names and documents.

21 4. Applicant seeks discovery from Witness BoA, CHASE and CREDIT REGISTRY
 22 related to the above referenced two accounts and two different transfers that
 23 occurred, through the BoA and CHASE accounts, listing CREDIT REGISTRY as the
 24 beneficiary, in May and June 2017 (as identified in Par. 21) and that information is

1 located and can be found in this District. *See 28 U.S.C. § 1782(a).*

2 **C. Discretionary Factors Favor Granting Applicant's § 1782 Application**

3 **1. Witnesses are Outside Jurisdictional Reach of South African Authorities**

4 a. The Witnesses BoA, CHASE and CREDIT REGISTRY are not the subject of
 5 the criminal investigations pending in South Africa.

6 b. The Supreme Court held that since “nonparticipants in the foreign proceeding
 7 may be outside the foreign tribunal’s jurisdictional reach … , their evidence,
 8 available in the United States, may be unobtainable absent § 1782(a) aid.”
Intel, 542 U.S. at 264.

9 c. A foreign tribunal has jurisdiction over those appearing before it and can itself
 10 order them to produce evidence. In contrast, nonparticipants in the foreign
 11 proceeding may be outside the foreign tribunal’s jurisdictional reach; hence,
 12 their evidence, available in the United States, may be unobtainable absent §
 13 1782(a) aid. *Id. at 264.*

14 d. As such, the relevant evidence, documents and information in BoA, CHASE
 15 and CREDIT REGISTRY’s possession, custody and control are not in the
 16 possession of the foreign tribunal and would be accessible without judicial
 17 assistance in this jurisdiction. *See In re Chevron Corp., 2010 U.S. Dist. LEXIS*
 18 *47034, at *20* (noting that Ecuadorian court and tribunal lacked jurisdiction to
 19 compel the individual, who was located in the district and not a party to the
 20 foreign proceedings, to produce the material sought) and *In re Microsoft*
 21 *Corp., 428 F. Supp. 2d 188, 194 (S.D.N.Y. 2006)* (finding section 1782
 22 *assistance unnecessary and improper where the discovery requested was*
 23 *already in the foreign tribunal’s possession).*

1 2. **Nature and Receptivity of South African Authorities to Evidence from 1782**

2 **Application**

3 a. Section 1782 (a) specifically provides “*The district court of the district in*
 4 *which a person resides or is found may order him to give his testimony or*
 5 *statement or to produce a document or other thing for use in a proceeding in*
 6 *a foreign or international tribunal, including criminal investigations*
 7 *conducted before formal accusation . . .*”

8 b. Section 1782 also authorizes and encourages judicial assistance even as to
 9 foreign proceedings that have not yet commenced or advanced. See *In re:*
 10 *Clerici* at 1333 n. 12 (citing *Intel*, 542 U.S. at 248-49).

11 c. Section 1782(a) contains no threshold requirement that evidence sought from
 12 a federal district court would be discoverable under the law governing the
 13 foreign proceeding. See *Intel*, 543 U.S. at 247; see also *In re Clerici*, 481 F.3d
 14 at 1333 n.12.

15 d. Applicant needs not meet a foreign discovery requirement, prior to being
 16 entitled to assistance under section 1782. See *In re Application of Winning*,
 17 2010 WL 1796579 at *10, n.7.

18 e. The receptivity of the foreign proceedings assistance from a U.S. court is one
 19 of the primary goals of § 1782 is to encourage foreign courts to provide
 20 similar assistance to U.S. courts. See *In re Premises Located at 840 140th*
 21 *Ave. Ne., Bellevue, Wash.*, 634 F.3d 557, 563 (9th Cir. 2011).

22 f. The Supreme Court has not elaborated on how to evaluate the receptivity of
 23 the foreign court, other than to caution against attempting to conduct in-depth
 24 analyses of the laws of the foreign jurisdiction. *Intel*, 542 U.S. at 263.

1 g. In evaluating the nature of the tribunal and character of the proceedings,
 2 courts in this Circuit have focused on the utility of the evidence sought. In re
 3 Ex Parte Application of Qualcomm Inc., 162 F. Supp. 3d 1029, 1040 (N.D.
 4 Cal. 2016); see also Intel, 542 U.S. at 264.

5 h. As already explained, the officers leading the investigations by The South
 6 African Police Services – Serious Commercial Crimes (SAPA # 3471/1/2019)
 7 have informed Applicant that they welcome the evidence he may able to
 8 secure from this 1782 Application and that they will share that information
 9 with the South African Department of Justice and South Africa’s Branch of
 10 Interpol, who will also be investigating and prosecuting.

11 3. **Applicant Is Not Attempting to Circumvent**
 12 **South African Proof Gathering Restrictions and Policies**

13 a. Applicant is not attempting to circumvent foreign proof-gathering
 14 mechanisms in its efforts to discover the true identities of the persons or
 15 entities behind the internet fraud that was perpetrated against Applicant and
 16 does not have to prove receptivity to show they are not attempting to
 17 circumvent foreign proof-gathering mechanisms. *See, e.g., In re Chevron, 762*
 18 *F. Supp. 2d 242, 252 (D. Mass. 2010).*

19 b. Applicants’ request for judicial assistance is only so he can assist in obtaining
 20 the documents showing the trail of the money so that the persons or entities
 21 behind the internet fraud that was perpetrated against Applicant can included
 22 in the South African Police Services – Serious Commercial Crimes (SAPA #
 23 3471/1/2019) investigation. *See In re Application of Winning, 2010 WL*
 24 *1796579 at *10.*

25 4. **Applicant Is Not Made in Bad Faith, for Purposes of Harassment or is part**

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- a. In considering applications for 28 USC 1782 judicial relief, district court may consider whether an application contains “unduly intrusive or burdensome requests,” Intel Corp., 542 U.S. at 265, is “made in bad faith, for the purpose of harassment,” Euromepa S.A. v. R. Esmerian, Inc., 51 F.3d 1095, 1101 n.6 (2d Cir. 1995); *In re Request for Assistance from Ministry of Legal Affairs of Trinidad and Tobago*, 848 F.2d 1151, 1156 (11th Cir. 1988), abrogated on a different ground by Intel Corp., 542 U.S. at 259; and *Matter of Application of O2CNI Co., Ltd.*, Case No. C 13-80125 CRB (LB), 2013 WL 5826730, at *15–16 (N.D.Cal. Oct. 29, 2013)
- b. Applicant is not attempting to circumvent foreign proof-gathering mechanisms in its efforts to discover the true identities of the persons or entities behind the internet fraud that was perpetrated against Applicant and does not have to prove receptivity to show they are not attempting to circumvent foreign proof-gathering mechanisms. *See, e.g., In re Chevron*, 762 F. Supp. 2d 242, 252 (D. Mass. 2010).
- c. Applicant seeks only the information relevant to the above referenced two accounts and two different transfers that occurred, through the BoA and CHASE accounts, listing CREDIT REGISTRY as the beneficiary, in May and June 2017 (as identified in Par. 21) that the South African Police Services – Serious Commercial Crimes (SAPA # 3471/1/2019) will be able to “follow the money” to identify and prosecute all the person(s) and/or entities in addition to the person(s) already being investigated and who created the fake and false domain names and documents.

1 **5. Application Not Unduly Burdensome or Intrusive**

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3 a. The requests made by Applicant are narrowly tailored to only testimony,
 4 information, documents and evidence that are directly related to the above
 5 referenced two accounts and two different transfers that occurred, through the
 6 BoA and CHASE accounts, listing CREDIT REGISTRY as the beneficiary, in
 7 May and June 2017 (as identified in Par. 21) that the South African Police
 8 Services – Serious Commercial Crimes Unit Investigation (SAPA #
 9 3471/1/2019) and those documents are / should be in the possession, custody
 10 and control of BoA, CHASE and CREDIT REGISTRY. As such the request
 11 is neither overly broad nor burdensome. *See In re Consorcio Ecuatoriano,*
 12 *2012 WL 2369166, at *20 n.7 and Intel, 542 U.S. at 265.*

13 b. The evidence requested is “relevant to the foreign proceeding”, to wit: the
 14 foreign proceedings by the South African Police Services – Serious
 15 Commercial Crimes Unit Investigation (SAPA # 3471/1/2019). *See In re Dr.*
 16 *Braga, 789 F. Supp. 2d at 1304; compare In re Consorcio Ecuatoriano, 2012*
 17 *WL 2369166 at *24 (holding that the discovery is plainly relevant to the*
 18 *foreign proceedings where they formed the basis for the defenses in those*
 19 *proceedings), Kang v. Noro- Moseley Partners, 246 Fed. App'x. 662, 664*
 20 *(11th Cir. 2007) (denial only due to “irrelevance of requested discovery to the*
 21 *nature of the foreign proceedings”).*

22 c. Applicants’ requests are not unduly intrusive and seek only testimony,
 23 information, documents and evidence relate to the money trail that will lead to
 24 persons or entities behind or who were art of the internet fraud to which
 25 Applicant fell victim and which documents are highly relevant to the issues

1 being considered in the foreign proceeding by the South African Police
 2 Services – Serious Commercial Crimes Unit Investigation (SAPA #
 3 3471/1/2019).

- 4 d. Because the Witnesses BoA, CHASE and CREDIT REGISTRY are not
 5 participants in nor subject to the jurisdiction of the South African
 6 investigating authorities, it is uncertain that the relevant information related to
 7 the true identities of the persons and entities behind the internet fraud against
 8 Applicant can be accessed in the absence of the granting of this request, as
 9 such are “outside the foreign tribunal’s jurisdictional reach.” *See Intel*, 542
 10 U.S. at 244.
- 11 e. The documents in Witnesses BoA, CHASE and CREDIT REGISTRY’s
 12 possession, custody and control carry sufficient relevance and evidentiary
 13 value and providing them does not subject it to undue burden. *See Fed. R.*
 14 *Civ. P. 45(c)(3)(iv), Int’l Ass’n of Machinists and Aerospace Workers v. P&B*
 15 *Transp.*, 2007 WL 4145974, at *2 (M.D. Fla. 2007); *Fadalla v. Life*
 16 *Automotive Products, Inc.*, 258 F.R.D. 501, 504 (M.D. Fla. 2007) (citing
 17 *Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004)).
- 18 f. The discovery requests of Applicant are sufficiently tailored and directly
 19 relate to the foreign proceedings / investigations and are limited to the above
 20 referenced two accounts and two different transfers that occurred, through the
 21 BoA and CHASE accounts, listing CREDIT REGISTRY as the beneficiary, in
 22 May and June 2017 (as identified in Par. 21) so that the South African Police
 23 Services – Serious Commercial Crimes Unit Investigation (SAPA #
 24 3471/1/2019) can continue and expand its investigations and prosecutions to

1 “follow the money” and include persons and entities (other than those already
 2 identified) and their relationship the transfers through BoA, CHASE and/or
 3 CREDIT REGISTRY and how they were involved in the internet fraud
 4 against Applicant. See *In re Consorcio Ecuatoriano*, 2012 WL 2369166 at *25
 5 (*holding that discovery was appropriately tailored as it “limit[ed] the request*
 6 *to information” within a six year time period relating to one specific contract*
 7 *and the deposition of a person most knowledgeable*), with *Advanced Micro*
 8 *Devices, Inc. v. Intel Corp.*, 2004 U.S. Dist. LEXIS 21437 (on remand from
 9 the Supreme Court, the district court found the 1782 application to be
 10 “unduly intrusive and burdensome [since there was] . . . no attempt to tailor
 11 its application to the subject matter of the EC Complaint”).

12 **6. Applicant’s Requests Satisfies Fed. R. Civ. P. Rules 26 & 45 Requirements**

13 a. **FRCP Rule 26**

14 i. Discovery under § 1782 is guided by the applicable standards found in the
 15 Federal Rules of Civil Procedure. See 28 U.S.C. § 1782 (providing that,
 16 “[t]o the extent that the order does not prescribe otherwise, the testimony or
 17 statement shall be taken, and the document or other thing produced, in
 18 accordance with the Federal Rules of Civil Procedure).
 19 ii. A court may authorize early discovery for the parties’ and witnesses’
 20 convenience and in the interests of justice. Fed. R. Civ. P. 26(d). Courts in
 21 this district generally consider whether a plaintiff has shown “good cause”
 22 for the early discovery. See, e.g., *IO Group, Inc. v. Does 1-65*, 2010 WL
 23 4055667, at *2 (N.D. Cal. 2010); *Solarbridge Tech. v. John Doe*, 2010 WL
 24 3419189 (N.D. Cal. 2010); *Semitool, Inc. v. Tokyo Electron America, Inc.*,

¹ 208 F.R.D. 273, 275-77 (N.D. Cal. 2002).

iii. The evidence needed by Applicants is in the possession, custody and control of witnesses BoA, CHASE and CREDIT REGISTRY and is limited to identifying information, such as names, addresses and contact information of the persons and entities related to the above referenced two accounts and two different transfers that occurred, through the BoA and CHASE accounts, listing CREDIT REGISTRY as the beneficiary, in May and June 2017 (as identified in Par. 21) that is part of the South African Police Services – Serious Commercial Crimes Unit Investigation (SAPA # 3471/1/2019) and which will also be part of the investigations and prosecutions to “follow the money” to include persons and entities (other than those already identified) who were part of the internet fraud against Applicant, and what relationship the above transfers through BoA, CHASE and CREDIT REGISTRY had on the fake, false and fraudulent emails, domain names and documents that were used to defraud Applicant, most of which originated in or were sent from South Africa. As such, the request does not violate the requirements of Fed. R. Civ. P. Rule 26.

b. **FRCP Rule 45**

20 i. Under FRCP Rule 45(a)(1)(C) a subpoena may command a nonparty served
21 to produce documents that are in its “possession, custody, or control.”
22 ii. “Control is defined not only as possession, but as the legal right to obtain
23 the documents requested upon demand.” *Searock v. Strippling*, 736 F.2d 650,
24 653 (2d Cir. 1984). “Control” may also be found where an entity has
25 “access to” and the “ability to obtain the documents.” *Bank of New York v.*

1 *Meridien BIAO Bank Tanzania Ltd., 171 F.R.D. 135, 144 (S.D.N.Y.*
2 *1997); see also, e.g., In re Ski Train Fire of November 11, 2000 Kaprun*
3 *Austria, 2006 WL 1328259, *5 (S.D.N.Y. 2006) (same); Addamax Corp. v.*
4 *Open Software Found., Inc., 148 F.R.D. 462, 467 (D. Mass. 1993).*

5 iii. “Access” and “ability to obtain documents” is found where
6 “documents ordinarily flow freely between” persons or entities. *Hunter*
7 *Douglas, Inc. v. Comfortex Corp., No. CIV. A. M8-85, 1999 WL 14007, at*
8 **3 (S.D.N.Y. Jan. 11, 1999).*

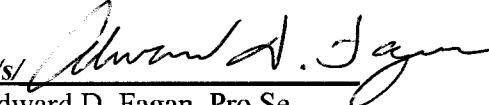
9 iv. The evidence needed by Applicant is or should be in the possession, custody
10 and control of witnesses BoA, CHASE and CREDIT REGISTRY as the
11 evidence relates only to the above referenced related to above referenced
12 two accounts and two different transfers that occurred, through the BoA and
13 CHASE accounts, listing CREDIT REGISTRY as the beneficiary, in May
14 and June 2017 (as identified in Par. 21) which are included in the South
15 African Police Services – Serious Commercial Crimes Unit Investigation
16 (SAPA # 3471/1/2019) .

17 **VIII. CONCLUSION**

18 **WHEREFORE**, in view of the foregoing, Applicant prays (i) for an Order (in the form
19 attached) directing / permitting the issuance of subpoenas duces tecum (in the forms attached) to
20 witnesses BANK OF AMERICA, CHASE AND CREDIT REGISTRY to appear, testify and/or
21 produce the limited categories of testimony, information, documents, information and records
22 and (ii) for such other and further relief as is just and appropriate and consistent with 28 U.S.C. §
23 1782.

24 Respectfully submitted,
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2 Dated: February ____ , 2019
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/s/ 
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